

WASHINGTON, D.C. 20505

Legislative Counsel

OLC 79-0825/a

19 APR 1979

Mr. William M. Nichols
General Counsel
Office of Management
and Budget
Washington, D.C. 20503

Dear Mr. Nichols:

This is in response to your request for the Central Intelligence Agency's comments on a proposed Executive Order entitled, "Occupational Safety and Health Programs for Federal Employees." We endorse the purpose of the Order, which is to reduce the number of job-related accidents and illnesses among Federal workers. However, due to the classified nature of our intelligence work, we do have some reservations concerning the proposal's potential impact on the Agency.

The Central Intelligence Agency presently complies with the standards set forth in the Occupational Safety and Health Act of 1970, 84 Stat. 1590. Section 19 of that Act provides that the head of each Federal agency is responsible for the conduct of the agency's Safety and Health program, thereby giving the Secretary of Labor a consultative role. This relationship is especially important in our situation because of the national security considerations which pervade the Central Intelligence Agency's work. We believe that it would be advisable from a security standpoint to conform the proposed Order to the Act, and we would therefore propose the following changes:

-- change the word "direction" to "guidance" in paragraph 4, line 5, of the Preamble;

-- insert the word "pertinent" before "recommendations" in paragraph 4, line 11, of the Preamble;

-- change the words "mandatory regulations" to "guidelines" in section 2(1), line 3;

-- change the word "regulations" to "guidelines" in section 3(2), line 1;

-- in section 3(6), line 1, delete "where the Secretary deems necessary and appropriate" and substitute "when requested," and delete the last part of the last sentence starting at "or at the ...";

-- insert the words "in consultation with the heads of departments and agencies" after the word "appropriate" in section 3(4), line 5; and

-- insert the words "in consultation with the heads of departments and agencies" after the word "appropriate" in section 3(6), line 2.

Section 4 of the proposed Order poses some problems for us with regard to inspections and investigations. The statutory responsibility of the Director of Central Intelligence to protect intelligence sources and methods from unauthorized disclosure (50 U.S.C. 403(d)(3)), requires that inspectors designated by the Secretary of Labor possess appropriate security clearances when visiting facilities engaged in classified work. This could be made clear in the proposed Order by striking the period and inserting the following words after "representative" in line 7 of section 4(2): ", provided that, when necessary, the inspector or investigator possesses appropriate security clearances." This addition would also serve to make the proposed Order consistent with Executive Order 12065 (National Security Information).

We must also object to the Secretary or his designee being given sole discretion to decide whether or not a Central Intelligence Agency representative may accompany an inspector. We request, therefore, that in part (4), line 2, the words "in consultation with the heads of departments and agencies" be inserted after the word "necessary." This overall provision at the end of section 4 would alleviate our concern.

We assume that the proposed Order is meant to apply to all employees of the Federal Government, whether they are serving overseas or domestically. If this is the case, it might be advisable for the sake of clarity to substitute the phrase "employees of the United States Government" for "in the Nation" (line 15 of section 1).

We appreciate the opportunity to review this proposed Executive Order. My staff is available for further consultation should you have any questions or problems regarding our comments.

Sincerely,

SIGNED

Frederick P. Hitz
Legislative Counsel

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